Filed 6/26/19 In re N.C. CA4/2

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| In re N.C., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>N.C.,<br><br>Defendant and Appellant. | E071139<br><br>(Super.Ct.No. SWJ1600046)<br><br>OPINION |

APPEAL from the Superior Court of Riverside County. Sean Lafferty, Judge. Affirmed.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Michael P. Pulos and Joseph C. Anagnos, Deputy Attorneys General, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant and appellant, N.C. (minor), admitted to one count of assault by means of force likely to produce great bodily injury with an allegation that he inflicted great bodily injury. (Pen. Code, §§ 245, subd. (a)(4), 12022.7, subd. (a).)[1] After a contested dispositional hearing, the court committed minor to the Department of Juvenile Justice (DJJ). Minor appealed

On appeal, minor argues the juvenile court abused its discretion when it committed minor to DJJ, because the record does not contain substantial evidence that minor would benefit from a placement with DJJ and that less restrictive alternatives would be ineffective. We disagree.

## II. FACTUAL AND PROCEDURAL BACKGROUND

Minor, age 17, is dual status youth pursuant to section 241.1, subdivision (e) of the Welfare and Institutions Code. Minor was diagnosed with bipolar disorder and attention deficit hyperactivity disorder at "a very young age." He was also diagnosed with an unspecified mood disorder, oppositional defiant disorder, and cannabis abuse.

Before becoming a dependent of the juvenile court, minor's maternal grandparents were his legal guardians. Minor and his brothers were removed from his grandparents'

[1] All further statutory references are to the Penal Code unless otherwise stated.

care on multiple occasions between March 18, 2013, and December 23, 2014. Minor was removed from his grandparents' home for a final time on December 23, 2014, and became a dependent of the court on March 18, 2015. On March 3, 2016, the court designated minor a ward of the court and determined him to be a dual status youth.

Prior to the offense that gave rise to this appeal, the district attorneys in both Los Angeles and Riverside Counties brought a combined five juvenile wardship petitions against minor, all of which contained at least one charge to which he admitted. In total, minor admitted to one count of obstructing a police officer (§ 148, subd. (a)(1)), one count of vandalism causing less than $400 in damage (§ 594, subd. (b)(2)), two counts of vandalism causing more than $400 in damage (§ 594, subd. (b)(1)), one count of criminal threats (§ 422), and one count of battery causing serious bodily injury (§ 243, subd. (d)). Each of these would have been a crime if committed by an adult. Minor was placed on probation for each, usually with orders to be placed in a new placement.

Between March 18, 2015, and March 25, 2018, minor was placed in nine different group homes, and twice in the Youth Treatment and Education Center (YTEC). Only two of these placements lasted longer than three months, and in the majority of them minor ran away, was expelled, or was arrested after two months or less. At every placement, minor exhibited severe behavioral issues, including repeatedly running away, threatening staff, being physically or verbally abusive to peers and staff, failing to follow directions, abusing drugs and alcohol, refusing therapy, refusing to take his psychotropic medication, and generally being noncompliant with the placement's program. Minor

exhibited the same behavior during his stays at juvenile hall between placements, where he received numerous citations, was sent to behavioral control segregation multiple times, and was placed in administrative segregation for attempting to incite a riot.

Minor's behavior was not universally negative during this period. On September 22, 2016, minor was placed with YTEC but was removed after just two weeks. However, minor was given a second chance and returned to YTEC. Minor then spent seven months at YTEC, from December 1, 2016, to July 12, 2017, without any major behavioral issues. Though he still argued with staff and struggled with authority, minor's behavior noticeably improved during this time. On July 12, 2017, he completed the entire program and graduated from YTEC.

In general, minor's behavior seemed to get better when he received counseling and took his prescribed psychotropic medications. Between June 8, 2016, and June 23, 2016, while in juvenile hall, minor took prescribed psychotropic medication twice daily. Minor's behavior improved during this period, as he obtained honor roll status and had no major behavioral issues. After minor returned to juvenile hall on July 1, 2016, he also returned to the honor roll, and his behavior was described as fair for the period between July 7 and July 18. Minor reported that he was taking his prescribed psychotropic medication during this time. Finally, his most successful placement, YTEC, was marked by minor taking his psychotropic medications and participating in weekly individual therapy sessions and family therapy sessions with his grandparents.

Nevertheless, minor's behavioral issues made it increasingly difficult to place him. From May 2016 to November 2017, 10 different prospective placements rejected minor due to his behavioral issues.

Minor's final placement began March 7, 2018, with Optimist group home in Los Angeles County. Once again, minor refused to participate in therapy or meet with therapists and was generally noncompliant. Just over two weeks later, on March 25, 2018, minor punched a peer several times, breaking the peer's thumb and creating a laceration which required stitches. Minor was arrested the next day and prohibited from returning to the placement. Minor was placed back in Riverside County juvenile hall, where, from March 30, 2018, to June 14, 2018, he received 17 citations for noncompliance, threats, verbal abuse, and other inappropriate behavior.

On April 10, 2018, the Los Angeles County District Attorney filed the sixth juvenile wardship petition against minor alleging battery with great bodily injury and assault by means of force likely to cause great bodily injury in connection with the March 25, 2018, incident. (§§ 243, subd. (d), 245, subd. (a)(4).) Both charges also contained allegations that minor actually did cause great bodily injury. (§§ 12022.7, subd. (a).) These would be crimes if committed by an adult. Minor admitted to the assault charge and the other charges were dismissed by the People on June 22, 2018.

On June 29, 2018, the Riverside County juvenile delinquency court ordered probation to screen minor for all appropriate placement options. Minor was rejected from

a third placement with YTEC, and his probation officer was concerned that no placement would accept him given his history.

On July 31, 2018, the court held a contested disposition hearing. At this hearing, minor's probation officer testified that a screening committee met to screen minor for possible placements on July 12, 2018. At the screening, the committee considered placing minor in an out-of-state placement, at YTEC, or at DJJ. However, YTEC rejected minor as had all previous prospective out-of-state placements. Given this, the screening committee focused on DJJ.

The screening committee ultimately concluded that placement with the DJJ would be the best fit for minor. The probation officer felt this was the best placement for minor because DJJ offers programs for anger management, substance abuse, gang affiliation, individual therapy, family therapy, and group therapy, as well as a program designed to address recidivism. She also agreed with YTEC's assessment that minor needed a program more extensive than YTEC's standard six- to nine-month commitment, and that she "wouldn't feel safe" sending him there because of his increasing aggression.

After the disposition hearing, the court ordered that minor be placed with DJJ. In ruling on minor's disposition, the delinquency court judge acknowledged that he "ha[s] been working with [minor] for almost two years," and stated, "I clearly believe that I have run out of options with [minor] here within the county locally." The court was not persuaded to override YTEC's rejection of minor in light of the minor's failed initial placement at YTEC and continued issues since his otherwise successful second

placement. The court considered minor's multiple failed placements and multiple rejections from other possible placements, as well as the probation officer's report, testimony, and recommendation.

The court's order committing minor to DJJ included authorization for DJJ to dispense psychotropic medications. The court reiterated that minor was to be given medications at a hearing on August 16, 2018, and a minute order the same day reasserting the conditions stated in the August 1 order.

Minor timely appealed on August 16, 2018.

## III. DISCUSSION

Minor argues that the juvenile delinquency court abused its discretion by committing him to DJJ because there was insufficient evidence to support that this commitment would probably benefit minor and that there were no less restrictive alternatives. We find that there was substantial evidence to support minor's commitment.

### A. *Standard of Review*

"We review a commitment decision only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court." (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; see *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) "A DJJ commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate." (*In re M.S.* (2009) 174 Cal.App.4th

1241, 1250-1251 [substantial evidence supported court's reason for finding less restrictive alternative would be inadequate or ineffective].)

An appellate court will not lightly substitute its decision for that of the juvenile court. It "must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them." (*In re Michael D., supra*, 188 Cal.App.3d at p. 1395.)

B. *There Was No Abuse of Discretion*

Minor argues there was insufficient evidence of a probable benefit to the minor and insufficient evidence that the court considered less restrictive alternatives. With regards to probable benefit, minor does not deny that the record contains evidence of mental health treatments offered by DJJ. Instead, minor argues that the record does not sufficiently expound upon these programs, that the probation officer's report is boilerplate and not tailored to minor's specific needs, and there was therefore no evidence these programs would meet minor's particular needs.

In determining placement in a juvenile delinquency case, the court focuses on the dual concerns of the best interest of the minor and the need to protect the public. (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) Accordingly, there must be sufficient evidence demonstrating probable benefit to the minor and the inappropriateness or ineffectiveness of the less restrictive alternatives. (*In re Michael D., supra*, 188 Cal.App.3d at p. 1396; *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) In arriving

at a disposition, the court considers the probation officer's report and any other relevant and material evidence that may be offered. (*In re Jimmy P.*, *supra*, at p. 1684.)

Pursuant to Welfare and Institutions Code section 734, a juvenile court is authorized to commit a juvenile to DJJ when it is fully satisfied that DJJ "with its specialized institutions and rehabilitative programs tailored to the [juvenile's] sophistication and need for security [citation], offer[s] the promise of probable rehabilitative benefit." (*In re Tyrone O.* (1989) 209 Cal.App.3d 145, 153.) "Where the minor has previously failed in a series of local programs . . . statewide confinement in the structured setting offered by DJ[J] may decisively outweigh other considerations." (*In re Greg F*. (2012) 55 Cal.4th 393, 418.) "Although the DJJ is normally a placement of last resort, there is no absolute rule that a DJJ commitment cannot be ordered unless less restrictive placements have been attempted." (*In re M.S.*, *supra*, 174 Cal.App.4th at p. 1250.) Moreover "[t]here is no requirement that the court find exactly how a minor will benefit from being committed to DJJ. The court is only required to find if it is probable a minor will benefit from being committed." (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486.)

Minor cites *In re Carlos J.* (2018) 22 Cal.App.5th 1(*Carlos J.*) to support his position that more specific evidence of probable benefit is required to support a commitment to DJJ than what was provided in this case. However, *Carlos J.* actually supports the opposite conclusion. In that case, our colleagues in the First District reversed the juvenile court's commitment because no witnesses testified at the disposition

hearing and the probation officer's report contained no discussion of the programs available at DJJ that would meet the minor's needs. (*Id.* at pp. 7-8.)

Though the court refused to create any bright line rule about how much evidence was enough for commitment, it explained that "it is reasonable and appropriate to expect the probation department, in its report or testimony, to identify those programs at the DJ[J] likely to be of benefit to the minor under consideration." (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 12.) Stating what programs are available is sufficient to meet the initial burden of showing probable benefit, since "the probation department is not required in its report and initial testimony to provide in-depth information about the DJ[J]'s programs or to preemptively respond to even predictable criticisms of the DJ[J]." (*Id.* at p. 13.) The court even acknowledged that in meeting this obligation, these reports may contain some boilerplate language, and that "[i]t will likely be acceptable for the probation department to include substantially similar information about the DJ[J] in most of its reports, with appropriate updates and customization based on the needs of the minor involved." (*Id.* at p. 12.)

The court went on to state that once some information about the programs available is provided to the court, "[i]f a minor wishes to dispute the availability or efficacy of particular programs . . . the minor must present sufficient evidence to reasonably bring into question the benefit he or she will receive from the adoption of the probation department's recommendation." (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 13.) Only once a minor expresses "concerns about a particular aspect of the DJ[J] and presents

evidence supporting those concerns," is it "necessary for the People to provide additional information to the juvenile court in order for the court to make a properly supported finding of probable benefit." (*Id.* at p. 14.)

The record in this case thus satisfied the standards set by *Carlos J.* The probation officer testified and provided a report, and both contained information about minor's particular needs, as well as the specific programs available at DJJ that could satisfy those needs. Minor presented no affirmative evidence, and minor's cross-examination of his probation officer largely focused on YTEC as an alternative to DJJ without eliciting or seeking to elicit any criticisms or details regarding the probable benefit of the DJJ's programs. *Carlos J.* thus counsels against minor's position, not for it.

Moreover substantial evidence did exist that DJJ had programs that would suit minor's needs, including individual and group therapy, substance abuse counseling, anger management, and, in particular, the CounterPoint antirecidivism program. Indeed, the court highlighted the last of these as a program unique to DJJ. (*In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 486 [question is whether commitment will probably benefit the minor, not exactly how]; see also *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576 [rehabilitation continues to be an important objective of the juvenile court law]; *In re Julian R.* (2009) 47 Cal.4th 487, 496 ["Juvenile proceedings continue to be primarily rehabilitative . . . ."].) That similar or better programs existed at YTEC does not mean there was insufficient evidence that DJJ's programs would probably benefit minor.

The record contains substantial evidence to support the court's conclusion that less restrictive alternatives would have been ineffective or inappropriate. In just over two and a half years after being removed from his grandparents' custody, minor was placed 12 different times in 10 different locations. Only two of these placements lasted longer than three months, and in the majority of them minor was removed after two months or less. All but one of these placements ended with minor being removed, arrested, or running away. At each, minor's behavior was noncompliant, aggressive, and threatening. Though minor did succeed at his second YTEC placement, his improved behavior did not carry over into subsequent placements. Indeed, his probation officer testified that his behavior was getting worse, not better. Because of this history, minor has also been rejected from at least 10 prospective placements.

This extensive history, which was explored in the probation officer's report, demonstrates that less restrictive means had been tried at length and were provably ineffective. The court noted, on the record, each of minor's previous failed placements and minor's checkered history with YTEC. The court also made clear that it understood the gravity of a DJJ commitment, but that it felt it had run out of options. This is the precise opposite of failing to consider whether less restrictive alternatives would be appropriate or effective. The court explicitly considered these alternatives and rejected them as ineffective based on substantial evidence in the record that prior less restrictive alternatives had repeatedly failed.

Minor argues that the screening committee failed to consider less restrictive alternatives, and that therefore the evidence presented to the court was incomplete and insufficient. But there is no requirement that the court do anything more than consider less restrictive alternatives. (See *In re Joseph H.* (2015) 237 Cal.App.4th 517, 544 [holding that "[t]he minor cannot complain that the court rejected," an alternate placement where the court heard testimony that DJJ commitment met the minor's needs and the minor presented no evidence in favor of alternate placement].) As discussed above, the court properly considered less restrictive alternatives, including YTEC, on the record. Substantial evidence supported the court's decision that less restrictive alternatives would be ineffective. Sadly, they had been tried extensively but proved wholly ineffective in changing the minor's behavior or protecting the public.

In sum, the juvenile court considered all the proper factors and sufficient evidence existed to support its decision to follow the probation officer's recommendation that minor be committed to DJJ. We find no abuse of discretion.

## IV. DISPOSITION

The judgment is affirmed.

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FIELDS
J.

We concur:

MCKINSTER
Acting P. J.

RAPHAEL
J.